

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE
- *Appellant*

CASE NO.
PW199/2010

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER
- *Respondent*

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr T. O'Grady
Ms M. Maher

heard this appeal at Dublin on 12th December 2011

Representation:

Appellant: Mr Breiffni O'Neill, Employment Consultant, 12 Halcam Court, 61 Pembroke Road, Dublin 4

Respondent: Sandra Masterson Power, Byrne Wallace, Solicitors, 2 Grand Canal Square, Dublin 2

This case came before the Tribunal by way of an appeal against the decision of the Rights Commissioner ref: r-084841-pw-09/DI.

The decision of the Tribunal was as follows:-

The appellant told the Tribunal that he was initially employed in the investment accounting unit of the respondent company. When a vacancy arose in the asset management department of the company he was approached by his line manager and told that a position was available and would he be interested in taking up the position as trainee risk analyst. The appellant approached a number of people in the company to seek information about the role available in relation to hours of work and the career prospects attached to the role. During these discussions the appellant was made aware that there would be long hours involved and flexibility required in the new role. The new role also presented the opportunity for career progression. There was no mention of overtime during any of these discussions and the appellant assumed that extra hours of work would be paid for on an overtime basis, in the same manner as his current role.

At the end of January 2009, on completion of working his first month in the new role, the appellant

submitted his overtime hours for payment using data from the time management system (TMS) as was practice in his previous role. On 3rd February he received a response from OK in HR saying that she would not submit the hours for payment. This was the first time that the appellant was made aware that there was no overtime in his new role. He resubmitted the hours and again they were rejected. He spoke to his line manager about the situation and she seemed surprised that he had not been told that there was no overtime in the asset management department. She asked OK to issue the appellant with a new contract. The appellant did not receive this.

At the end of February 2009 the appellant submitted overtime hours in respect of that month for payment and again they were rejected. The appellant was then given a copy of the overtime procedures which state *“where overtime becomes necessary prior approval must have been granted by the Line Manager on each occasion before overtime is worked.”* The appellant continued to submit overtime claims for 6 months after he received this email.

At a meeting with his line manager, PR, and EM from HR, the appellant asked about payment for working extra hours and was told that he would be given time off in lieu. This was calculated on the TMS and the appellant kept his own record on a spreadsheet. At the end of July the appellant sought to take some days off in lieu of these extra hours. This request was refused and his line manager said that, at the meeting, he did not agree to time off in lieu of hours worked. The appellant went to PR's line manager, RM. She apologised for the situation and offered, as a gesture, for the appellant to take the days off in lieu. The appellant told her that because the company had already reneged on the time in lieu agreement he wished to be paid overtime for the hours.

The Tribunal heard evidence from NM, who had responsibility for the operations unit. He explained that as a department overtime was not incurred in the asset management department. He would have explained to the appellant that the work in this department would be quite intense around the quarter end and month end process and that he would need to be available as required during these times. NM said that when he spoke to the appellant he was disappointed that the new role was not a promotion, with no overtime and no extra pay.

KC, head of finance and HR told the Tribunal when the vacancy arose in the Investment Risk Area they talked about people capable of the new role and the appellant's studies indicated that he may be a suitable candidate. KC had two discussions with the appellant about the role and the career prospects resulting from same. The appellant was aware that there would not be a salary increase or promotion and it was clear to KC that the appellant knew he would be taking a hit.

It was explained to the appellant that there was bonus opportunities. At the time there was a bonus scheme that was handsomely rewarded.

The appellant asked KC would he be compensated for “taking a hit” as a result of the new role and it was KC's understanding from this query that the appellant knew there was no overtime. KC did not say to him that there was no overtime. The other people in the department who work extra hours do not get overtime. The overtime policy states that prior approval is required.

Determination

Having considered all of the evidence adduced at the hearing the Tribunal finds that the appellant is not entitled to be paid overtime unless the company overtime policy is complied with, i.e. prior approval being obtained from a line manager. Accordingly the Tribunal upholds the decision of the Rights Commissioner ref: r-084841-pw-09/DI.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)